PT 10-10
Tax Type: Property Tax
Issue: Educational Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

FIRST PRESBYTERIAN CHURCH OF LIBERTYVILLE, APPLICANT	**No.:**	**09 PT 0066**
	Tax Year:	**2008**
	P.I.N. Nos.:	**11-16-300-138**
		11-16-315-001
v.	**Real Estate Tax Exemption**	
	Lake County Parcels	
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	**Julie-April Montgomery Administrative Law Judge**	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: David A. Semmelman, Semmelman & Semmelman, Ltd., on behalf of First Presbyterian Church of Libertyville; John D. Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raised the issue of whether a preschool, that occupied a portion of Lake County Parcel Index Number ("P.I.N.") 11-16-315-001 ("subject property") qualified for exemption from 2008 real estate taxes under 35 ILCS 200/15-35(c), wherein all property used for educational purposes and not leased or otherwise used with a view to profit is exempt.

First Presbyterian Church of Libertyville ("Applicant") filed an Application for Property Tax Exemption for the property with P.I.N. 11-16-300-138 and the subject property for the 2008 tax year with the Lake County Board of Review ("Board"). The Board reviewed the application and subsequently recommended to the Illinois

Department of Revenue ("Department") that a full-year exemption be granted. The Department rejected the Board's recommendation in part and affirmed it in part in a determination dated June 11, 2009. The Department found that P.I.N. 11-16-300-138 was exempt while the subject property was "exempt except for the lower level of the Church, specifically rooms 03, 04, 05, 06, 07, 13 and 14 and the land on which they stand, the play yard, the out building, and the land on which it stands is taxable, ([as] not [being] in exempt use)." Department Ex. No. 1 ("Non-homestead Property Tax Exemption Certificate"). Applicant filed a timely request for hearing with regard to the Department's partial exemption denial.

A Hearing was held where Applicant presented both testimonial and documentary evidence. The Department presented documentary evidence. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination for the 2008 tax year be affirmed.

FINDINGS OF FACT:

1. The Department established jurisdiction over this matter and its position that Lake County P.I.N. 11-16-300-138 was exempt while the subject property was exempt except for the Church's lower level rooms 3 through 7, 13 and 14 as well as the play yard and out building and the land on which all stand for the tax year 2008 by the admission of the Non-homestead Property Tax Exemption Certificate. Department Ex. No. 1; Tr. p. 22.
2. Applicant leased that portion of the subject property that encompassed rooms 3 through 7, 13 and 14 of the Church's lower level as well as the play yard and out

building to Libertyville Cooperative Nursery School ("Co-Op"). Applicant Ex. No. 1 ("Industrial Building Lease" and rider); Tr. pp. 16-17.

3. Applicant charged Co-Op rent in excess of $3,000 a month. Applicant Ex. No. 3 (Applicant's monthly income and expenses attributed to Co-Op); Tr. p. 17.
4. Applicant's monthly expenses attributed to Co-Op were approximately $2,000 a month. Applicant Ex. No 3; Tr. p. 19.
5. Co-Op was a not-for-profit entity pursuant to section 501(c)(3) of the Internal Revenue Code. Applicant Ex. No. 6 (Co-Op's Internal Revenue Service Letter granting section 501(c)(3) status).
6. Co-Op's purpose was to "provide a cooperative, non-sectarian, not-for-profit pre-school, operated on professional lines." Applicant Ex. No. 5 (Co-Op's By-Laws); Department Ex. No. 2 (Co-Op webpage); pp. 39-40.
7. Co-Op was licensed as a day care center by the Department of Children and Family Services. Tr. p. 42.
8. Co-Op was not accredited as a school by any State agency. Tr. p. 41.
9. Co-Op had classes for two and a half to five years old children. Tr. p. 27.
10. Co-Op classes were to prepare children for kindergarten. Tr. p. 30.

CONCLUSIONS OF LAW:

An examination of the record establishes that Applicant has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption from 2008 real estate taxes for all of the subject property. In support thereof, are made the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to this constitutional authority, the General Assembly enacted section 15-35 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*), which allows exemptions for property used for schools and educational purposes and provides in relevant part as follows:

> Schools. All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:
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> * * *
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> (c) property donated, granted, received or used for public school, college, theological seminary, university or other educational purposes, whether held in trust or absolutely. 35 ILCS 200/15-35(c).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171

Ill. 2d 263, 271 (1996). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992).

Applicant raised three arguments in support of its request that all of subject property be exempted from tax. First, a portion of the subject property was used by a "school." Second, the school provided a public benefit that eased the tax burden. Third, case law supports Applicant's position because the Co-Op's use of a portion of the subject property was an "exempt use, and as an exempt use leasing [by Applicant] to an exempt use[r]…[means Applicant] retain[s] its exemption." Tr. pp. 12, 53-54.

Applicant stated that Co-Op used a portion of the subject property to operate a preschool that, among other things, prepared children for kindergarten through systematic instruction. Tr. pp. 29-30, 39-40, 53. Applicant also presented testimony that Co-Op met the Illinois Standards for Early Childhood Education. Tr. pp. 35, 39.

Case law identifies two factors as determinative of whether a given property constitutes a school or a facility used for "educational purposes" pursuant to the exemption stated in 35 ILCS 200/15-35. First, does the property contain a school offering an established, commonly accepted program of academic instruction? Carpenters' Apprentice and Training Program v. Dept. of Revenue, 293 Ill. App. 3d 600 (1st Dist. 1997). Generally, a commonly accepted program of academic instruction is necessary for a determination the particular program consists of traditional subject matter common to accepted schools and institutions of learning. *Id*. at 608. Second, does the

program in question substantially lessen what would otherwise have been a governmental obligation, *i.e.*, would the State be otherwise required to offer such a program of study in a tax supported public school? *Id*. at 609.

Both of these criteria were further defined by the Illinois Supreme Court in Coyne Electrical School v. Paschen, 12 Ill. 2d 387 (1957), where the Supreme Court found that in order for an institution to qualify as a school for purposes of a property tax exemption, its course of study must fit into the general scheme of education founded by the State and supported by public taxation and substantially lessen what would otherwise be a governmental function and obligation. *Id*. at 392-93.

In Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765 (1st Dist. 2000), the First District Appellate Court applied this two-part test to determine whether an organization operating a daycare center qualified for exemption from retailers' occupation and use taxes because it was operated for educational purposes. The court found taxpayer failed to meet both prongs of the above stated two part test. With respect to the first prong, the court in Rogy's New Generation stated that the "fundamental flaw in [taxpayer's] case is that the State did not provide, nor mandate, education for children under the age of five." *Id.* at 772. As a result, the taxpayer did not establish that its early childhood learning program fit into the general scheme of education founded by the State. *Id*. As to the second prong, the court found that because Illinois was not required to provide and did not mandate education for children under the age of five, there was no government obligation to educate these children, and as such, "no corresponding public tax burden to bear." *Id.*

The current case is akin to Rogy's New Generation. Co-Op offered a program

which was licensed by the Department of Children and Family Services as a daycare (but Co-Op called it a preschool) which offered a program that the State of Illinois neither provided or mandated and as such "no corresponding public tax burden" can be deemed alleviated.[1]

Subsequent to the decision in Rogy's New Generation, Illinois now offers and strongly promotes early childhood education programs. In 2006, the General Assembly passed Preschool for All Children ("Preschool for All") (105 ILCS 5/2-3.71), which is a voluntary, state-funded preschool program for 3 and 4 year olds whose parents want their children to participate. The Preschool for All statute provides that the "State Board of Education shall encourage local school districts and other eligible entities to evaluate the population of preschool children in their communities and provide preschool programs, pursuant to this subsection, where appropriate." 105 ILCS 5/2-3.71(5).

This statute demonstrates the legislature's intent to promote preschool education. Nevertheless, encouraging preschool education and recognizing its importance are not the same as requiring it. The statute does not mandate that every child in this State receive a preschool education, and it does not require the State to provide preschool education for those who want it. It simply provides a source of funding for some preschools. 105 ILCS 5/2-3.71(4)-(4.5).

In Illinois, elementary schools are required by the Illinois School Code, 105 ILCS 5/1-1, *et seq.,* to teach a particular curriculum. See also 23 Ill. Adm. Code, sec. 1.420, 1.430 (Public School Instructional Program). For grades kindergarten through 8, Illinois public schools are mandated to provide instruction in specific areas like reading, science,

[1] The five year olds who attended the Co-Op's program were either "children who are not ready for kindergarten, although they might be age eligible…[or]in kindergarten during the morning and then come to [the Co-Op] program for one or two classes one or two days a week" Tr. p. 27.

mathematics, and social studies just to name a few. 23 Ill. Adm. Code, sec. 1.430; 105 ILCS 5/27-1 *et seq*. (Courses of Instruction – Special Instruction). However, the Illinois School Code does not require pre-kindergarten (or preschool) education in the public school system.

Inasmuch as the State does not provide, nor mandate, education for children under the age of five, or a pre-kindergarten education, Applicant is unable to establish that Co-Op's program "fits into the general scheme of education founded by the State" because similar State programs do not exist. This is especially true when one considers that Co-Op offered a preschool program that was admitted to prepare children for the first level of State provided education – kindergarten. Tr. p. 30.

Applicant averred that it provided a substantial benefit to the public by Co-Op's preparation of children for school so that state resources were not subjected to a large burden because Co-Op's children were prepared for school. Tr. pp. 30-32, 53. In addition, Applicant alleged because there was parental participation, there was the added benefit that such parents learned parenting skills. Tr. p. 34. Applicant further argued that "good parenting is certainly a benefit to the public and certainly reduces the tax burden." Tr. p. 54. No other facts or arguments were proffered as to how the Co-Op lessened the public tax burden. Inasmuch as education is not required for children under the age of five (or preschoolers), there was no corresponding public tax burden to be lessened.

Last, Applicant argued that Childrens Development Center, Inc. v. Walter A. Olson, 52 Ill. 2d 332 (1972) supports its entitlement to tax exemption. Applicant posits that because its use of subject property was exempt, its lease to another exempt user like

a school (which it alleged Co-Op to be) would deem Co-Op's use of a portion of the subject property tax exempt pursuant to Olson. Tr. p. 12.

The Olson case involved nuns leasing their convent to a children's center. The court stated that the primary use of property was determinative of its tax status. *Id.* at 336. With regard to leased property, the court said:

> "[w]e likewise consider that it is the primary use to which the property is devoted after leasing which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, 'with a view to profit,' the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose the tax-exempt status of the property continues though the use may involve an incidental production of income." *Id.*

The court went on to find that the primary use of the convent by the lessee was a tax exempt charitable purpose which did not destroy the tax exempt status the convent enjoyed under the nuns prior to the lease. *Id.* Hence, Olson stands for the proposition that in order that tax exempt status not be destroyed by a lease of the property in question, the lessee must be engaged in a primary use that serves a tax exempt purpose.

Co-Op alleged its use of a portion of the subject property was primarily for the tax exempt purpose of education. However, as discussed above, Co-Op did not establish its use was for a tax exempt educational purpose.

Moreover, both Olson and 35 ILCS 200/15-35 exclude from exemption property that is leased or otherwise used with a view to profit. Olson at 336; 35 ILCS 200/15-35. In Swank v. Department of Revenue, 336 Ill. App. 3d 851 (2d Dist. 2003), the court was asked to determine "whether properties 'used with a view to profit,' even if used for educational purposes, are entitled to tax exemption under section 15-35. Stated another

way, does the 'used with a view to profit' exclusion of section 15-35 apply to properties falling within the parameters of section 15-35(c)." *Id*. at 856. The court stated explicitly that it declined "to extend tax exemption under section 15-35 to properties held for profit, even if they are used for educational purposes." *Id.* at 863.

In Turnverein 'Lincoln' v. Board of Appeals of Cook County, 358 Ill 135 (1934), the court was concerned with a property owned by a non-profit corporation that leased said property to tenants for business purposes. Taxpayer argued that the property was used primarily for educational purposes and was not leased with a view to profit because the property was owned by a non-profit corporation and the rental income received was offset by operating expenses. The court found:

> The mere fact that property is owned by a nonprofit corporation affords no basis for exempting the property from taxation. Concerning the second ground urged, that the income from the stores was offset by the operating expenses, it need only be observed that, if property, however owned, is let for a return, it is used for profit, and so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss. Turnverein at 144.

Inasmuch as rent was collected from store and restaurant tenants, such income was viewed as an indication that the property housed a facility operated for profit. *Id*. Hence, the property's primary use was found to be for recreational and physical exercise, not education, and the exemption was denied. *Id*. at 143.

Applicant has not presented clear and convincing evidence to show it did not lease a portion of the subject property with a view to profit. Applicant presented no financial records like a balance sheet or income statements. To the contrary, Applicant presented testimonial and documentary evidence that it received more than $3,000 a

month in rent from Co-Op. Applicant Ex. No. 3; Tr. 17. While Applicant presented evidence that $2,000 of its monthly expenses for the subject property were attributable to the premises occupied by Co-Op, Applicant admitted that it would have incurred these same expenses even if Co-Op had not leased a portion of the subject property. Tr. p. 19. Hence, Applicant not only leased a portion of the subject property with a view to profit but, in fact, realized a profit which at a minimum was in excess of $1,000 a month.

Consistent with the law, the fact that Applicant received rent must be construed to find that Applicant's lease of a portion of the subject property was motivated by a view to profit. Moreover, when the presumption in favor of taxation is factored into the analysis, it must be concluded that a portion of the subject property was leased with a view to profit and as such that portion of the subject property leased to Co-Op cannot be exempted from property taxes.

RECOMMENDATION

For the reasons stated above, the Department's determination which found that P.I.N. 11-16-300-138 was exempt while the subject property was "exempt except for the lower level of the Church, specifically rooms 03, 04, 05, 06, 07, 13 and 14 and the land on which they stand, the play yard, the out building, and the land on which it stands is taxable, ([as] not [being] in exempt use)" should be affirmed.

July 30, 2010

Julie-April Montgomery
Administrative Law Judge